Filed 8/4/09 In re Baby Boy M. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re Baby Boy M., a Person Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. S.L., Defendant and Appellant.	E047466 (Super.Ct.No. RIJ114180) OPINION

APPEAL from the Superior Court of Riverside County. Gary Vincent, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Pamela Rae Tripp, under appointment by the Court of Appeal, for Defendant and Appellant.

Pamela J. Walls, County Counsel, and Sophia H. Choi, Deputy County Counsel, for Plaintiff and Respondent.

Sharon S. Rollo, under appointment by the Court of Appeal, for Minor.

Appellant S. L., who is the biological father of Baby Boy M. (the child), appeals the termination of his parental rights under Welfare and Institutions Code section 366.26.[1] Appellant claims his parental rights were terminated in violation of his right to due process. He also contends the juvenile court erred when it summarily denied his section 388 petition without an evidentiary hearing at the same time it terminated his parental rights.

FACTUAL AND PROCEDURAL BACKGROUND

The child was detained at birth after testing positive for amphetamines. Mother identified appellant as a biological parent of the child and indicated he had been arrested on the day she went into labor. The original dependency petition was filed by Riverside County Department of Social Services (DPSS) on April 8, 2008, alleging the child came within section 300, subdivisions (b) (failure to protect) and (g) (no provision for support). Mother was allegedly homeless and had a long history of substance abuse, which had resulted in the removal of four other children. Appellant allegedly had a criminal history suggestive of drug use, was incarcerated for an undetermined period, and was unable to arrange for the child's care during his

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

incarceration.[2]

Mother was not present at the detention hearing on April 9, 2008, but appellant was present in custody, and counsel was appointed to represent him. At that time, appellant filed a Statement Regarding Parentage, Judicial Council Form, form JV-505 (form JV-505). On form JV-505, appellant checked the box stating, "I believe I am the child's parent and request that the court enter a judgment of parentage." The court found probable cause for detention and ordered reunification services and visitation for mother and appellant. The court's minute order was later amended to approve visits with the child at appellant's place of incarceration.

On June 4, 2008, mother was not present, but appellant appeared for the jurisdictional hearing. However, appellant was excused because the court determined he was only an "alleged father." On June 5, 2008, at the continued jurisdictional hearing, appellant was not personally present but was represented by counsel at the hearing. Counsel indicated appellant "always wanted to be part of this child's life" and asked the court to authorize a paternity test. The court found the allegations in the

---

[2] Under section 300, subdivision (b), any child may be adjudged a dependent of the court if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child . . . or by the willful or negligent failure of the parent . . . to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent . . . to provide regular care for the child due to the parent's . . . substance abuse." A child can also be adjudged a dependent of the court under section 300, subdivision (g), if "[t]he child has been left without any provision for support; . . . [or] the child's parent has been incarcerated . . . and cannot arrange for the care of the child . . . ."

petition to be true, denied visitation and services to both parents, and set a section 366.26 hearing to consider the termination of parental rights. Under section 361.5, subdivision (a), the court concluded appellant was not entitled to services, because there were no facts to establish he was a presumed father. However, the court did authorize paternity testing for appellant at his place of incarceration.

On August 14, 2008, the child was placed in a preadoptive home, because DPSS was unable to locate biological family members who were willing to provide permanency. On September 10, 2008, the social worker reported that the prospective adoptive parents bonded quickly with the child and were fully committed to adoption. The child appeared bonded and attached to the prospective adoptive parents and was thriving in the preadoptive home.

On October 6, 2008, the court decided to continue the section 366.26 hearing until December 4, 2008, because the results of the paternity test were not yet available. On November 12, 2008, appellant filed a petition under section 388 stating he would be released on December 19, 2008, and requested six months of reunification services. However, on December 4, 2008, the court denied appellant's section 388 petition, terminated parental rights, and found the child likely to be adopted. The court also awarded de facto parent status to the prospective adoptive parents.

DISCUSSION

Due Process

Appellant contends he was denied his right to due process and suffered prejudice, because the juvenile court "did not properly inquire" about the child's

paternity, "unreasonably delayed in facilitating the paternity testing," and allowed an undue delay in obtaining the results of paternity testing. He also believes the court violated his right to due process by denying him the opportunity to prove he qualified for presumed father status. He therefore challenges the juvenile court's termination of his parental rights. Our review of the record convinces us appellant was afforded all of the process that was due.

1. Alleged Failure to Inquire.

In support of his argument that the court did not make proper inquiries on the issue of paternity, appellant cites section 316.2 and rule 5.635 of the California Rules of Court. Subdivision (a) of section 316.2 states in part as follows: "At the detention hearing, or as soon thereafter as practicable, the court shall inquire of the mother and any other appropriate person as to the identity and address of all presumed or alleged fathers. The presence at the hearing of a man claiming to be the father shall not relieve the court of its duty of inquiry." Similarly, California Rules of Court, rule 5.635(a), states that: "The juvenile court has a duty to inquire about and, if not otherwise determined, to attempt to determine the parentage of each child who is the subject of a petition filed under section 300 . . . ."

The record indicates mother was not present at the detention hearing on April 9, 2008, or the jurisdictional hearings held June 4 and 5, 2008, and as a result, she could not be questioned by the court. At the time of the detention hearing, the court did have before it a report by the social worker who did question mother. Because he was immediately identified by mother as a biological parent, appellant was present from

the outset of the proceeding. Appellant was not only present at the detention hearing on April 9, 2008, he was represented by counsel and filed form JV-505. Under these circumstances, we reject appellant's contention the court violated his right to due process by failing to make appropriate inquiries on the issue of paternity.

2. Presumed Father Status.

Appellant believes there is enough evidence in the record to show he qualified for "presumed father" status under Family Code section 7611, subdivision (d), or under our Supreme Court's decision in *Adoption of Kelsey S.* (1992) 1 Cal.4th 816 (*Kelsey S.*), but the court denied him the opportunity to make his case. For example, he claims he immediately held the child out as his own by indicating to the social worker he was "absolutely certain" he was the child's father and wanted to be involved in the child's future. He also claims he showed a full commitment to his parental responsibilities by immediately expressing his interest in the child and by requesting custody with his relatives because he was incarcerated. If not denied the opportunity by the court to prove his status, appellant argues he would have been entitled to reunification services, visitation, and eventual custody. In support of his position, appellant cites the social worker's initial report dated April 30, 2008, which recommended granting him reunification services. In our view, the record simply does not support appellant's contentions.

"The extent to which a father may participate in dependency proceedings and his rights in those proceedings are dependent on his paternal status. [Citation.]" (*In re Christopher M.* (2003) 113 Cal.App.4th 155, 159.) A man who could be the father of

a dependent child but who has not been shown to be a biological or presumed father is an "alleged father." (*In re Jerry P.* (2002) 95 Cal.App.4th 793, 801.) An "alleged father" has no right to visitation, custody, reunification services, or appointed counsel. (*In re O. S.* (2002) 102 Cal.App.4th 1402, 1410 (*O. S.*).) An "alleged father" only has the right to notice and an opportunity to show he should be afforded presumed father status. (*Id*. at p. 1408.)

"Mothers and *presumed* fathers have far greater rights." (*Kelsey S.*, *supra*, 1 Cal.4th at p. 824.) "Whether a biological father is a 'presumed father' . . . is critical to his parental rights." (*Id*. at p. 823.) "[O]nly a presumed, not a mere biological, father is a 'parent' entitled to receive reunification services under section 361.5." (*In re Zacharia D.* (1993) 6 Cal.4th 435, 451 (*Zacharia D.*).) Generally, a man will qualify as a "presumed father" if he is married to the mother, or if he and the mother have signed a voluntary declaration of parentage and his name appears on the birth certificate. (Fam. Code, §§ 7540, 7611, subd. (c).) An unwed, biological father may become a "presumed father" if "[h]e receives the child into his home and openly holds out the child as his natural child." (Fam. Code, § 7611, subd. (d).) Under appropriate circumstances, custody may be granted to a biological father so he can qualify as a presumed father under Family Code section 7611, subdivision (d). (*Kelsey S.*, *supra*, 1 Cal.4th at p. 842.)

"To be declared a presumed father under Family Code section 7611, a man must ask the trier of fact to make such a determination and establish the existence of the foundational facts by a preponderance of the evidence." (*O. S.*, *supra*, 102

Cal.App.4th at p. 1410, fn. omitted.) "[T]he court cannot sua sponte make such a declaration." (*Ibid*.) "The court may make its determination of parentage or nonparentage based on the testimony, declarations, or statements of the alleged parents." (Cal. Rules of Court, rule 5.635(e)(3).)

An unmarried, biological father can also achieve a status which is essentially equal to that of "presumed father" if he "promptly comes forward and demonstrates a full commitment to his parental responsibilities—emotional, financial, and otherwise." (*Kelsey S., supra*, 1 Cal.4th at p. 849.) Under these circumstances, an unwed biological father has a "federal constitutional right to due process [that] prohibits the termination of his parental relationship absent a showing of his unfitness as a parent." (*Ibid*.) "A court should consider all factors relevant to that determination. The father's conduct both *before and after* the child's birth must be considered. Once the father knows or reasonably should know of the pregnancy, he must promptly attempt to assume his parental responsibilities as fully as the mother will allow and his circumstances permit. In particular, the father must demonstrate 'a willingness himself to assume full custody of the child—not merely to block adoption by others.' [Citation.] A court should also consider the father's public acknowledgment of paternity, payment of pregnancy and birth expenses commensurate with his ability to do so, and prompt legal action to seek custody of the child." (*Ibid*.)

"[T]ime is of the essence" in a dependency proceeding. (*O. S., supra*, 102 Cal.App.4th at p. 1409.) "[I]f a man fails to achieve presumed father status prior to the expiration of any reunification period in a dependency case, whether that period be 6,

12, or 18 months . . . he is not entitled to such services." (*Zacharia D.*, *supra*, 6 Cal.4th at 453.) "The reunification period is expressly not tolled . . . by the parents' absence or incarceration. (§ 361.5, subds. (a), (d), & (e)(1).)" (*Id*. at p. 446.) Nontolling prevents "a parent's unilateral action from impeding a child's permanent and timely placement." (*Id*. at p. 452.)

In addition, the California Rules of Court specifically set forth the procedure to be followed in cases where an alleged father completes and files a California Judicial Counsel Form, form JV-505, Statement Regarding Parentage (form JV-505): "If a person appears at a hearing in [a] dependency matter . . . and requests a judgment of parentage on form JV-505, the court must determine: [¶] (1) Whether that person is the biological parent of the child; and [¶] (2) Whether that person is the presumed parent of the child, *if that finding is requested*." (Cal. Rules of Court, rule 5.635(h), italics added.)

The record shows mother and appellant were both interviewed by the social worker on April 22, 2008, shortly after the detention hearing. Both said appellant's name was on the child's birth certificate. In a report dated April 30, 2008, the social worker did recommend reunification services for appellant, apparently based on the belief that appellant's name was on the birth certificate. The court then initially assumed appellant qualified for presumed father status and ordered reunification services and visitation for appellant. However, appellant's status was later reduced to that of "alleged father" when it was determined he was not identified on the birth certificate.

During the interview on April 22, 2008, appellant did tell the social worker he was "absolutely certain" he was the child's biological father. However, on April 9, 2008, the date of the initial detention hearing, appellant was represented by counsel and filed Form JV-505, Statement Regarding Parentage, stating "I *believe* I am the child's parent." [Italics added.] Form JV-505 also provides space for the declarant to request a finding of presumed father status by the court, as well as space for the declarant to set forth any facts that would support such a finding. Appellant left this portion of the form blank. In other words, appellant did not request a finding of presumed father status from the court. Nor did he set forth any foundational facts from which the court could make such a determination. For example, he did not make any representations on the form about his relationship with mother during her pregnancy, such as whether he provided her with food, clothing, or shelter, or whether he purchased anything in anticipation of the child's birth. He also did not list anyone he told the child was his. Form JV-505 also includes a number of pertinent warnings, such as the following: "As the child's alleged parent, you will not get services to help you get your child back. You will not automatically get the child to live with you or your relatives."

In the initial interview with the social worker, appellant did identify relatives as prospective caregivers for the child, and it appears the social worker contacted or attempted to contact these relatives. However, there is nothing to show there were paternal relatives willing or able to assume custody of the child during appellant's incarceration. Nor were we able to locate anything suggesting appellant made a

formal request for custody. Thus, it is apparent appellant's incarceration, which obviously was of his own doing, precluded him from receiving the child into his home and from making a full commitment to his parental responsibilities. We therefore disagree with appellant's contention the record includes enough evidence to show he could have qualified as a presumed father under Family Code section 7611, subdivision (d), or under *Kelsey S*, *supra*, 1 Cal.4th 816.

Based on the foregoing, we also cannot conclude the juvenile court violated appellant's right to due process by denying him the opportunity to prove he qualified for presumed father status. Instead, the record shows appellant specifically elected to proceed only as an alleged father, apparently preferring to await the results of the paternity test. The record further shows appellant elected not to request that the court make a finding of presumed father status and not to present foundational facts which could have resulted in such a finding. If he had done so, he might have been declared a presumed father and could have become eligible for visitation and reunification services during his incarceration.[3] As evidenced by the scope of elections encompassed within Form JV-505 and the relevant rules of court, it was not necessary for appellant to await the results of the paternity test to present any relevant

---

[3] Section 361.5, subdivision (e)(1), states that: "If the parent . . . is incarcerated . . . the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child." Services include visitation "where appropriate." Section 361.5, subdivision (e)(1), also sets forth factors which should be considered in determining whether to provide services to an incarcerated parent.

foundational facts in order to make his intentions toward the child clear to the court. In short, appellant had the opportunity to request a finding of presumed father status and to present relevant evidence on the issue, but elected not to do so. As discussed more fully below, Father also did not immediately step forward with relevant facts after learning the results of the paternity test.

3. Delay in Obtaining Results of Paternity Test.

As part of his due process claims, appellant argues the court prejudiced his paternity claim by allowing a delay of several months to obtain the results of the paternity test and by then denying reunification services after receiving the results because there was no time left.

We agree with appellant that the record does show an unexplained delay of several months in obtaining the results of the paternity test. On April 9, 2008, appellant filed form JV-505 requesting "that the court enter a judgment of parentage." However, the court did not order a paternity test until appellant's counsel requested one at the continued jurisdictional hearing on June 5, 2008. At the same time, the court denied reunification services and visitation and set a section 366.26 hearing to consider the termination of parental rights. The record further indicates the social worker did not submit a referral for a paternity test until September 2, 2008. The court continued the section 366.26 hearing on October 6, 2008, because the results of the paternity test were not yet available. The child did not go for his testing appointment until October 16, 2008. A testing kit was also sent to appellant at this time, but it was never received, so another one was sent to him on November 3, 2008. Results were

not available until November 28, 2008, and were not filed with the court until December 4, 2008, the date of the continued section 366.26 hearing when parental rights were terminated.

Although there was a delay in obtaining the results of the paternity test, the court did not deny reunification services to appellant after it received the results because there was no time left. Instead, the court reasoned that a biological father is not entitled to services. As outlined above, only a presumed father is entitled to services, and appellant did not present any new evidence after receiving the results of the paternity test that could establish he qualified for "presumed father" status. We must therefore reject appellant's contention he was prejudiced by the delay in obtaining the results of the paternity test. Because he presented no facts to show he qualified for presumed father status, the results of the proceeding would have been the same even if there was no delay in obtaining the results of the paternity test.

Denial of Section 388 Petition

Appellant challenges the summary denial of his section 388 petition without a full evidentiary hearing. He argues he made the requisite prima facie showing of changed circumstances because paternity testing established he was the child's biological father. As appellant concedes, he did not specifically ask for the court to consider evidence establishing he qualified for "presumed father" status. However, he argues the juvenile court should have construed his petition liberally to be a request for a full evidentiary hearing, so he could present evidence to show he was a presumed father under our Supreme Court's decision in *Kelsey S.*

"While a biological father is not entitled to custody under section 361.2, or reunification services under section 361.5 if he does not attain presumed father status prior to the termination of any reunification period, he may move under section 388 for a hearing to reconsider the juvenile court's earlier rulings based on new evidence or changed circumstances." (*Zacharia D., supra,* 6 Cal.4th at p. 454, fn. omitted.) Section 388 petitions "are to be liberally construed in favor of granting a hearing to consider the parent's request. [Citations.] The parent need only make a prima facie showing to trigger the right to proceed by way of a full hearing. [Citation.]" (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309-310.) To make a prima facie showing, a parent must demonstrate that (1) there is a genuine change of circumstances or new evidence, and (2) revoking the previous order would be in the best interests of the child or children. (*In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1079.) "If the liberally construed allegations of the petition do not show changed circumstances such that the child's best interests will be promoted by the proposed change of order, the dependency court need not order a hearing. [Citation.]" (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

General or conclusory allegations are not enough to make a prima facie showing under section 388. (*In re Edward H.* (1996) 43 Cal.App.4th 584, 593.) "A 'prima facie' showing refers to those facts which will sustain a favorable decision if the evidence submitted in support of the allegations by the petitioner is credited." (*Ibid*.) The petition must include "specific allegations describing the evidence constituting the proffered changed circumstances or new evidence." (*Ibid.*)

"Successful petitions have included declarations or other attachments which demonstrate the showing the petitioner will make at a hearing of the change in circumstances or new evidence." (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.) "We review the juvenile court's summary denial of a section 388 petition for abuse of discretion." (*Ibid.*)

In his section 388 petition, which was submitted on Judicial Council Forms, form JV-180, appellant requested a change in the court's prior order which found him to be an "alleged father" and denied him reunification services. As changed circumstances, appellant cited his release date of December 19, 2008. He also stated he was unable as a result of his arrest "to sign a declaration of paternity or take the minor into his care and custody," but has "never waivered in his belief that he is the child's father and wants to provide for him." Appellant claimed the changes he was requesting would be better for the child because he "has always expressed his desire to parent the minor" and "has always been consistent in his assertion that he is the father of the minor." Although incarcerated, appellant claimed he "has made the effort to learn everything that is happening with the minor" and "he wants to raise his son."

In response to the petition, the court issued an order setting the matter for hearing on December 4, 2008, at the same time as the continued section 366.26 hearing. However, the court indicated the purpose for setting the matter for hearing was "to argue threshold only." As we read the order, the court's intent was only to consider arguments as to whether appellant's petition was sufficient to make a prima facie showing. At the hearing, the court heard oral argument and acknowledged

receipt of the results of the paternity test proving appellant is biologically related to the child, which the court said "would factor in on the 388." In addition, appellant submitted a certificate stating he successfully completed a 90-hour program during his incarceration covering a number of topics, including parenting and substance abuse. The court denied the petition, stating, "Here the only issue for father is whether or not his status changes. He can't bypass his status and file a 388 asking the Court to give him relief he cannot otherwise receive and is not entitled to receive. He cannot, as alleged father, come to court and ask the Court through the 388 process to give him services when he's not entitled to any. [¶] . . . [¶] His motion is denied out of hand. . . . [H]e's not presenting to the Court any argument he's presumed father. That's the only way he gets services."

In our view, appellant's section 388 petition and the documents submitted in support thereof were not enough to make a prima facie showing of changed circumstances. First, no facts were alleged that could establish presumed father status. Once again, "only a presumed, not a mere biological, father is a 'parent' entitled to receive reunification services under section 361.5." (*Zacharia D.*, *supra*, 6 Cal.4th at p. 451.) Without specific allegations indicating appellant could qualify as a presumed father, there was nothing to suggest the court had a basis for changing its prior order denying reunification services to appellant.

Second, the petition did not include any facts to show that a change to the court's prior order denying reunification services to appellant would be in the best interests of the child. At the time of the hearing on appellant's section 388 petition,

the child was about eight months old and had been living in a preadoptive home for about four months. The social worker reported that the prospective adoptive parents bonded quickly with the child and were fully committed to adoption. The child appeared bonded and attached to the prospective adoptive parents and was thriving in the preadoptive home.

Appellant had no relationship with the child. The court initially granted visitation for appellant at his place of incarceration, but then denied visitation shortly thereafter because there were no facts to establish "presumed father" status. We were unable to locate anything indicating appellant had any visits whatsoever with the child. Instead, as outlined more fully above, the record shows appellant essentially sat on his rights by electing to await the results of the paternity test and did not present foundational facts that could have led to presumed father status, visitation, and services during his incarceration. Once again, "time is of the essence" in a dependency proceeding. (*O. S., supra,* 102 Cal.App.4th at p. 1409.) A father who does not act quickly or adequately during a dependency action risks the opportunity to develop a parental relationship with the child. (*Zacharia D., supra,* 6 Cal.4th at p. 452.) This is particularly true in the case of very young children, because the law recognizes the need for infants and toddlers to move quickly toward permanence and a commitment in a loving home in recognition of their unique developmental needs and their vulnerable stage of development. (*Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 846-847.)

Third, the bare allegation that appellant was being released from prison and wanted to parent the child was not enough to suggest there was a genuine change in the circumstances which led to the child's removal. At the time of removal, the child was left with no provision for support. Mother and appellant both had a history of substance abuse and were therefore unable to provide regular care. Appellant also had a significant criminal history and admitted to a transient lifestyle. For two years, he lived in various motels and sometimes in the truck he drove for work. It is true that appellant completed a worthy program during his incarceration, which addressed drug abuse, parenting, and employment issues. However, on the record before the court at the section 388 hearing, appellant's ability to provide adequate food, clothing, and shelter for the child and his ability to remain free of substance abuse were all very uncertain. Under these circumstances, the court could reasonably conclude it would not be in the child's best interest to grant appellant six months of reunification services to see if he would and could do what was required to comply with a case plan, eventually obtain custody, and provide permanence for the child. We therefore cannot disagree with the juvenile court's decision to deny appellant's section 388 motion without an evidentiary hearing and terminate parental rights.

We must also reject appellant's reliance on cases such as *In re Paul H.* (2003) 111 Cal.App.4th 753 (*Paul H.*) and *In re Julia U.* (1998) 64 Cal.App.4th 532 (*Julia U.*). Appellant's conduct is in sharp contrast with these and other cases in which judgments terminating parental rights have been reversed on appeal because the juvenile court did not give an alleged father the opportunity to establish presumed

father status before terminating parental rights. The alleged father in *Paul H.* appeared for the first time at a jurisdictional hearing after learning he might be the child's father. (*Paul H.*, at p.756.) The court gave him some forms and told him to work quickly to establish his paternity, at which time the court would consider offering him reunification services. (*Ibid*.) The alleged father worked diligently to try to establish his paternity and a relationship with the child. He attempted to visit the child, made numerous calls to social workers, adoption workers, and the district attorney's office to schedule a paternity test. He also contacted the department of child support services, wrote a letter to the court, and consulted an attorney. (*Id*. at pp. 756-758.) However, his diligent efforts "were met with repeated roadblocks and, ultimately, were unsuccessful." (*Id*. at p. 761.) He was given misleading information and was never even interviewed about his circumstances, suitability, or background. (*Id*. at pp. 761-762.) "[B]ased on this dearth of information," the appellate court concluded the alleged father might have been able to establish paternity and receive reunification services if his efforts had not been thwarted at every turn. (*Id*. at p. 762.)

In *Julia U.*, *supra*, 64 Cal.App.4th 532, there were delays by the mother and the social worker in identifying the appellant as an alleged father and providing him with notice. After receiving notice, however, appellant contacted the social worker to request a paternity test, expressed his interest in the child, voluntarily appeared in court, publicly stated his commitment to the child if he was a biological parent, and requested visitation, which was denied. (*Id*. at pp. 536-537, 541-542.) The court ordered a paternity test, which was delayed for administrative reasons until three or

four months after it was requested, when reunification services had already been terminated. During the delay, the alleged father called several times to find out why the paternity test was taking so long. (*Id*. at p. 538.) After the test confirmed he was a biological parent, appellant filed a section 388 petition requesting reunification services and physical custody of the child. (*Ibid*.) The juvenile court denied the petition even though appellant "was not incarcerated or otherwise unavailable to learn parenting skills." (*Id.* at p. 544.) The appellate court reversed on constitutional grounds because reunification services were terminated without proper consideration of appellant's diligence, commitment to the child, and fitness to be a parent. (*Ibid*.) Because the child had only been removed from the mother's custody for two months, the appellate court concluded reunification services had been terminated prematurely without awaiting the results of the paternity test and without giving appellant an opportunity to visit with the child and to determine his fitness. (*Id*. at pp. 543-544.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ
P. J.

We concur:

GAUT
J.

MILLER
J